WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2003 Senate Bill 218	Senate Amendment 1
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Senate Bill 218 relates to revising provisions of ch. 180 of the statutes relating to business corporations. The major areas of ch. 180 that are affected include: taking actions with respect to classes or series of stock; shareholder notices and meetings; creation of committees and powers of committees; practices relating to mergers, share exchanges, and business combinations; and transfer of corporation property to certain affiliates.

Under ***current law***, s. 180.1103, Stats., governs action on a plan of merger or share exchange. Most plans of merger or share exchange require shareholder approval.

Senate Amendment 1 provides that a merger of an indirect wholly owned subsidiary or parent ***does not require shareholder approval***. Under the amendment, unless the articles of incorporation of the parent corporation specifically provide otherwise, or the parent corporation is a statutory close corporation, a parent corporation may merge with or into one of its indirect wholly owned subsidiaries without approval of the shareholders of the parent corporation or of the indirect wholly owned subsidiary if all of the following conditions are satisfied:

- The parent corporation and the indirect wholly owned subsidiary are the only parties to the merger.

- Each share of the parent corporation outstanding immediately prior to the merger is converted in the merger into a share of a corporation that was a wholly owned subsidiary of the parent corporation immediately prior to the merger. The converted shares must have the same designation, preferences, limitations, and relative rights as the shares of the parent corporation immediately outstanding prior to the merger.

- The organizational documents of the holding company that is issuing shares in the merger must contain provisions identical to the organizational documents of the parent corporation immediately prior to the merger, with certain exceptions.

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- Immediately following the effective time of the merger, the surviving entity is a wholly owned subsidiary of the holding company.

- The directors of the parent corporation immediately prior to the merger are the directors of the holding company immediately following the merger.

- The organizational documents of the surviving entity immediately following the effective time of the merger must contain provisions identical to the organizational documents of the parent corporation immediately prior to the merger, with certain exceptions. The organizational documents must contain specific provisions relating to approvals needed for acts of the surviving entity; how to amend the organizational documents of the surviving entity if it is a limited liability company (LLC); and fiduciary duties of the surviving entity if it is a LLC.

- The shareholders of the parent corporation do not have a gain or loss under the Internal Revenue Code as a result of the merger, in the opinion of the board of the parent corporation.

Senate Amendment 1 also provides that the following occur when a merger of an indirect wholly owned subsidiary or parent corporation takes effect:

- The restrictions in current law relating to shareholder vote; restrictions on business combinations; or control share voting restrictions, to the extent that they applied to the parent corporation and its shareholders immediately prior to the merger, also apply to the holding company and it shareholders immediately following the merger to the same extent as if the holding company were the parent corporation, as it existed prior to the completion of the merger.

- If provisions in current law relating to restrictions on business combinations; determining market value and control; or control share voting restrictions, did not apply to a shareholder of the parent corporation immediately prior to the merger, these provisions do not apply to the shareholder as a shareholder of the holding company solely because of the merger.

- If the corporate name of the holding company immediately following the merger is the same as the corporate name of the parent corporation immediately prior to the merger, the shares of the holding company into which the shares of the parent corporation are converted are represented by the certificates that previously represented shares of the parent corporation.

- A shareholder of the parent corporation immediately prior to the merger retains any right that the shareholder had immediately prior to the merger to institute or maintain a derivative proceeding in the right of the parent corporation.

- No act of the surviving entity that requires the additional approval of the shareholders of the holding company or any successor company shall give rise to dissenters' rights for the shareholders or the beneficial shareholders of the holding company or any successor to the holding company.

- Shares of the parent corporation that were shares of a preexisting class immediately prior to the merger would be shares of a preexisting class of the holding company or surviving entity immediately following the merger, to the same extent as if the holding company or surviving entity were the parent corporation as it existed immediately prior to the merger.

- The provisions of s. 180.1706 (4), Stats., relating to certain shareholder voting requirements, that applied to the parent corporation immediately prior to the merger would apply to the holding company or surviving entity immediately following the merger, to the same extent as if the holding company or surviving entity were the parent corporation, as it existed immediately prior to the merger.

- Certain rights or obligations [of the types referred to in s. 180.0627 (2), 180.0630 (4), 180.0722 (2), 180.0730 (1), or 180.0731 (1)] that applied to shareholders of the parent corporation immediately prior to the merger would also apply to the shareholders of the holding company immediately following the merger, to the same extent as if the holding company were the parent corporation as it existed immediately prior to the merger, unless the agreement, waiver, proxy, or trust establishing the rights or obligations specifies otherwise.

Legislative History: On February 20, 2004, the Senate Committee on Economic Development, Job Creation and Housing introduced Senate Amendment 1, and recommended adoption of Senate Amendment 1 by a vote of Ayes, 5; Noes, 0; and recommended passage of the bill, as amended, by a vote of Ayes, 5; Noes, 0; on that same date. The Senate adopted Senate Amendment 1 and passed the bill, as amended, by a voice vote on March 2, 2004.

LR:ksm